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5 Newport Beach, CA 92660 (*Espinoza/Pleadings/Nt of Entry*)
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9 Attorneys for Defendants,
10 WELLS FARGO BANK, N.A., and FIRST AMERICAN LOANSTAR TRUSTEE SERVICES

11
12 UNITED STATES DISTRICT COURT
13
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 JOE ESPINOZA,) Case No.: 5:09-cv-04111-JW
16 vs.)
17 Plaintiffs,) **NOTICE OF ENTRY OF ORDER AND**
18) **JUDGMENT IN FAVOR OF DEFENDANTS**
19) **WELLS FARGO BANK, N.A., FIRST**
20) **AMERICAN LOANSTAR TRUSTEE**
21) **SERVICES, AND BANK OF AMERICA,**
22) **NATIONAL ASSOCIATION, AND AGAINST**
23) **PLAINTIFF JOE ESPINOZA**

24)
25 WELL'S FARGO BANK, N.A.; FIRST)
26 AMERICAN LOANSTAR TRUSTEE)
27 SERVICES; BANK OF AMERICA,)
28 NATIONAL ASSOCIATION and DOES 1 - 50,)
inclusive)

29)
30 Defendants.)
31)
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34)

35 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD, IF ANY:**

36 PLEASE TAKE NOTICE THAT Defendants WELL'S FARGO BANK, N.A. and FIRST
37 AMERICAN LOANSTAR TRUSTEE SERVICES's Motion to Dismiss was granted on November
38 18, 2009. The Court directed Plaintiff to file his Amended Complaint on or before December 4,
39 2009. On December 18, 2009, two weeks after the Court's deadline for Plaintiff to file an Amended

1 Complaint had passed, having no record of such Complaint and receiving no communication either
2 from Plaintiff or Plaintiff's counsel, the Court issued an Order to Show Cause re: Dismissal for Lack
3 of Prosecution. The December 18 Order required Plaintiff to file a certification on or before January
4, 2010, to show cause why this case should not be dismissed for failure to prosecute. Having
5 received no response, and as a result, on January 14, 2010, the Court issued its Order Dismissing
6 Plaintiff's Case pursuant to Fed. R. Civ. P. 41(b). A true and correct copy of the Court's January 14,
7 2010 Order is attached hereto as Exhibit "A."

8 On January 14, 2010, the Court subsequently entered its Judgment in Favor of Defendants
9 Wells Fargo Bank, N.A., First American Loanstar Trustee Services, and Bank of America, National
10 Association, and against Plaintiff Joe Espinoza. A true and correct copy of the Judgment is attached
11 hereto as Exhibit "B."

12
13 Respectfully submitted,

14 WRIGHT, FINLAY & ZAK, LLP

15 Dated: January 20, 2010

16 By: /s/ Nicole K. Neff

17 T. Robert Finlay, Esq.

18 Nicole K. Neff, Esq.

19 Attorneys for Defendants, WELL'S FARGO BANK,
20 N.A., and FIRST AMERICAN LOANSTAR TRUSTEE
21 SERVICES

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EXHIBIT “A”

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 Joe Espinoza, NO. C 09-04111 JW
11 Plaintiff,
12 v.
13 ORDER OF DISMISSAL PURSUANT TO
FED. R. CIV. P. 41(b)
Wells Fargo Bank, N.A., et al.,
Defendants.

15 On November 18, 2009, the Court issued an Order Granting Defendants' Motion to Dismiss
16 With Leave to Amend. (hereafter, "November 18 Order," Docket Item No. 18.) The Court directed
17 Plaintiff to file his Amended Complaint on or before December 4, 2009. (*Id.* at 5.) The Court
18 clearly warned that, "Failure to timely file an Amended Complaint or file one that tracks the terms of
19 this Order may result in sanctions pursuant to Rule 41(b) of the Federal Rules of Civil Procedure."
20 (*Id.*)

On December 18, 2009, two weeks after the Court’s deadline for Plaintiff to file an Amended Complaint had passed, having no record of such Complaint and receiving no communication either from Plaintiff or Plaintiff’s counsel, the Court issued an Order to Show Cause re: Dismissal for Lack of Prosecution. (hereafter, “December 18 Order,” Docket Item No. 20.) The December 18 Order required Plaintiff to file a certification on or before January 4, 2010, to show cause why this case should not be dismissed for failure to prosecute. The Court warned that if Plaintiff fails to file the certification, “the January 25 hearing will be vacated automatically and the case will be dismissed.”

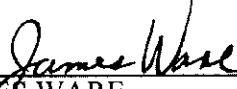
1 (Id.) In addition, the Court warned that, “[f]ailure to comply with any part of this Order will be
2 deemed sufficient grounds to dismiss this action pursuant to Fed. R. Civ. P. 41(b).” (Id.)

3 To date, neither Plaintiff nor his counsel has filed any responses with the Court. In light of
4 Plaintiff’s non-responsiveness, the Court VACATES the January 25 hearing date. It appears that
5 Plaintiff has abandoned this litigation. Thus, the Court finds that Defendants have been prejudiced
6 by Plaintiff’s failure to prosecute and orders this case dismissed pursuant to Fed. R. Civ. P. 41(b).
7 This dismissal is on the merits. Judgment shall be entered accordingly.

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10 Dated: January 14, 2010



JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Nicole Kimberly Neff nneff@wrightlegal.net
T. Robert Finlay rfinlay@wrightlegal.net
3 Tracy Lee Wood tracyleewood@yahoo.com

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5 **Dated: January 14, 2010**

Richard W. Wieking, Clerk

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7 **By: /s/ JW Chambers**
Elizabeth Garcia
Courtroom Deputy

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EXHIBIT “B”

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 || Joe Espinoza, NO. C 09-04111 JW

11 Plaintiff, **JUDGMENT**

V.

12 Wells Fargo Bank, N.A., et al.,

Defendants.

Pursuant to the Court's January 14, 2010 Order of Dismissal Pursuant to Fed. R. Civ. P.

16 41(b), judgment is entered in favor of Defendants Wells Fargo Bank, N.A., First American Loanstar
17 Trustee Services, and Bank of America, National Association, against Plaintiff Joe Espinoza.

18 Each party shall bear their own fees and costs. The Clerk shall close this file.

20 || Dated: January 14, 2010

James Ware
JAMES WARE
United States District Judge

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1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Nicole Kimberly Neff nneff@wrightlegal.net
T. Robert Finlay rfinlay@wrightlegal.net
3 Tracy Lee Wood tracyleewood@yahoo.com

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5 **Dated: January 14, 2010**

Richard W. Wieking, Clerk

6 By: /s/ JW Chambers
7 Elizabeth Garcia
8 Courtroom Deputy

1 [X] (Federal) I declare that I am employed in the office of a member of the bar of this Court
2 at whose direction the service was made.

3 Executed on January 20, 2010, at Newport Beach, California.

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5 Steven E. Bennett
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1 PROOF OF SERVICE

2 I, Steven E. Bennett, declare as follows:

3 I am employed in the County of Orange, State of California. I am over the age of
4 eighteen (18) and not a party to the within action. My business address is 4665 MacArthur
5 Court, Suite 280, Newport Beach, California 92660. I am readily familiar with the practices of
6 Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with
7 the United States Postal Service. Such correspondence is deposited with the United States
8 Postal Service the same day in the ordinary course of business.

9 On January 20, 2010, I served the within **NOTICE OF ENTRY OF ORDER AND**
10 **JUDGMENT IN FAVOR OF DEFENDANTS WELLS FARGO BANK, N.A., FIRST**
11 **AMERICAN LOANSTAR TRUSTEE SERVICES, AND BANK OF AMERICA,**
12 **NATIONAL ASSOCIATION, AND AGAINST PLAINTIFF JOE ESPINOZA** on all
13 interested parties in this action as follows:

14 by placing [] the original a true copy thereof enclosed in sealed envelope(s)
15 addressed as follows:

16 Tracy L. Wood, Esq.
17 Law Offices of Tracy Wood
18 5980 Stonebridge Drive, Suite 117
19 Pleasanton, CA 94588
20 Attorney for Plaintiff Joe Espinoza

21 (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this date
22 following ordinary business practices.

23 (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200,
24 complied with California Rules of Court, Rule 2003, and no error was reported by the
25 machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to
26 print a transmission record of the transmission.

27 (BY PERSONAL SERVICE) I have caused our Service of Process, First Legal to serve
28 all interested parties in this action.

29 (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and correct copies
30 of thereof enclosed in a package designated by Federal Express with the delivery fees
31 provided for.